REMARKS

This response addresses Examiner's remaining Rejections (1), (2), and (5) of claims 1, 3, 14, 16, 33, and 36-40 of the Official Action, which are set forth and discussed further below in greater detail.

In the present case, claims 1, 3, 5-8, 13, 14, 16, 33, and 36-40 are pending, with claims 1 and 33 being currently amended, and claims 5-8 and 13 being currently withdrawn from consideration. The withdrawn claims depend from claim 1 and would be allowable upon allowance thereof.

With respect to independent claim 1, the woven fabric sheeting has been further defined to specify "all of the fibers of at least one of the warp yarns being solely of natural fibers." [underlining for emphasis]. Support for the amendment can be found throughout the specification and at least at paragraphs [0010] and [0018], for example.

Independent claim 33 has been similarly amended and can be viewed for present purposes as a claim depending from claim 1, wherein $x = 2$ and $y = 1$. Accordingly, the remarks herein will focus on independent claim 1 (with specific mention of claim 33 where thought to be useful), but without waiver or right to present additional arguments, including as directed to one or more of the dependent claims should that become necessary.

Also, as a part of this reply, Applicant has included the declaration of Richard Stewart ("The Stewart Declaration") pursuant to 37 C.F.R. §1.132. The Stewart Declaration is attached as Exhibit A.

Rejection (1): The §102 rejection over Love

The Rehearing Decision re-affirmed Examiner's §102 rejection of claims 1, 3, 14, 16, 33, 35, and 38-40 under 35 U.S.C. 102(b) as allegedly anticipated by Love III U.S. Patent Application Publication No. 2004/0229538 ("Love"). While Applicant does not agree with the

rejection or the Board's rationale in re-affirming the same, in an effort to streamline prosecution and move this case to its conclusion, claim 1 (and 33) has been further amended so as to now specifically require that all of the fibers of at least one warp yarn be solely of natural fibers. [underlining for emphasis]. In other words, one warp yarn must be made only of natural fibers. For the following reasons, Love clearly fails to disclose at least that feature and thus the anticipation rejection must be withdrawn. *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987) (A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference).

The warp yarns disclosed in Love must include a synthetic fiber because it is clearly directed to woven stretch fabrics that have at least about 50% or greater of a synthetic fiber component, in order that the yarn will retain its structural conformation after a heat setting process. The fabrics can be made from yarns containing synthetic fibers, blends of two or more types of synthetic fibers, or blends of synthetic fibers and natural fibers; and the yarns can be made of spun or filament yarns. *See* abstract, paragraph [0014], and the Examples. Thus, there is no teaching in Love of a woven fabric having a spun yarn (let alone a spun warp yarn) made solely of natural fibers. Again, claim 1 expressly states that all of the fibers of at least one of the yarns must all be natural, which is directly at odds with Love. Indeed, Love does not teach the required yarn. At best, Love discloses a spun yarn that is a blend of natural and synthetic fibers, which is not a yarn solely of natural fibers. Hence, the rejection is overcome and must be withdrawn, and consequently Rejection (2), which rejects dependent claims 36 and 37 over Love, also must be withdrawn.

Examiner's Rejections (3) and (4)[3] were vacated by the Board in the Decision and, thus, are not addressed herein. In view thereof, we next turn to remaining Rejection (5).

Rejection (5): The Obviousness-Type Double Patenting Rejection based on Heiman and the Fairchild Dictionary

In re-affirming Examiner's rejection of claim 1 (and 3, 14, 16, 33, and 35-37) for nonstatutory obviousness-type double patenting over claims 1-21 of Heiman U.S. Patent No. 5,495,874 ("Heiman") in view of Fairchild's Dictionary of Textiles (Tortora, Phyllis. 7th Edition. Fairchild Publications, New York, 2003, p. 596) ("the Fairchild dictionary") in the Rehearing Decision, the Board refused to consider Applicant's new Declaration evidence from Richard Stewart ("the Stewart Declaration"),which is now being submitted concurrently herewith as Exhibit A for Examiner's review and consideration. Applicant submits that the Stewart Declaration undermines the present double patenting rejection, which is premised on factually insufficient information, as is explained next.

With respect to Heiman and the Fairchild dictionary double patenting rejection, Examiner recognizes that Heiman fails to teach a weave pattern using warp yarn floats where x is greater than y. Indeed, Heiman expressly discloses a plain weave construction and does not make mention of any other possible pattern. Heiman's construction works and there was no need or basis to look at altering the disclosure. Nevertheless, without reason and, indeed as if at random, Examiner turns to the Fairchild dictionary for its generic mention that twill weaves are commonly known woven fabric structures used to produce strong, durable fabrics with the smallest twill being a 2/1 twill. In combining the references, Examiner assumes that one would substitute the 1x1 plain weave of Heiman with the twill weave, e.g., 2x1 pattern, of the Fairchild

[3] Rejection (3) -- The rejection of claims 1, 3, 14, 16, 33, and 35-40 under 35 U.S.C. 103(a) as allegedly unpatentable over Collier U.S. Patent No. 5,487,936 ("Collier") in view of Lovingood U.S. Patent Application Publication No. 2003/0190853 ("Lovingood"); Rejection (4) -- The rejection of claims 1, 3, 14, 16, 33, and 35-40 under 35 U.S.C. 103(a) as allegedly unpatentable over Heiman in view of the Fairchild dictionary.

dictionary "since twill weaves are a commonly known weave structure which is known to produce a strong, durable fabric." Page 6 of Examiner's Answer dated May 14, 2008. However, the converse is understood in the art. Specifically, a twill weave, e.g., a 2x1, is not as strong as a conventional 1x1 plain weave pattern, as is disclosed in Heiman, as a result of the float patterns introduced into the fabric. In support thereof, Applicant refers Examiner to the Stewart Declaration, wherein the Declarant Richard Stewart, an expert in the textile industry, states:

> A woven fabric sheeting having a twill weave, e.g., a 2x1 pattern, is not as strong a fabric when compared to a woven fabric having a conventional 1x1 plain weave pattern, as is disclosed in Heiman U.S. Patent No. 5,495,874 ("Heiman"). The additional float patterns introduced into the fabric, via the twill weave, lessen the strength of the woven fabric. And if faced with maintaining the strength of the woven fabric, I would not look to replace a 1x1 plain weave with a weaker 2x1 twill weave.

Stewart Declaration, Paragraph 9.

In view thereof, it is submitted that one having ordinary skill in the art would not replace the stronger 1x1 plain weave of Heiman for the weaker 2x1 twill weave disclosed in the Fairchild dictionary, as assumed by Examiner. In addition thereto, as compared to a 1x1 plain weave pattern, it is also well known that a twill weave, e.g., a 2x1 pattern, is more expensive to produce and consequently sell, because of the additional patterning involved with a twill weave operation. Again, in support thereof, Applicant refers Examiner to the Stewart Declaration, wherein the expert Richard Stewart states:

> A woven fabric sheeting having a twill weave, e.g., a 2x1 pattern, is more expensive to produce and, consequently, sell, as compared to a woven fabric having a 1x1 plain weave, because of the additional patterning involved with providing the twill weave.

Stewart Declaration, Paragraph 10. And this directly contradicts the sole objective of Heiman, which is as follows:

> The object of the present invention is to provide an improved, fabric sheeting which has a blend of the durability characteristics of a polyester fabric and the "feel", absorbency and other desirable characteristics of a cotton fabric, and particularly to do so in a fashion that reduces the acquisition cost of sheeting and bed linens and other products made therefrom (Emphasis added).

Col. 3, lines 10-16.

Based on all of the above, Applicant submits that the obviousness-type double patenting rejection over Heiman and the Fairchild dictionary is improper and must be withdrawn.

Conclusion

As a result of the remarks given herein, Applicant submits that the rejections of the pending claims have been overcome. Therefore, Applicant respectfully submits that this case is in condition for allowance and requests allowance of the pending claims.

If Examiner believes any detailed language of the claims requires further discussion, Examiner is respectfully asked to telephone the undersigned attorney so that the matter may be promptly resolved. Applicant also has submitted all fees considered necessary herewith. Should any additional fees or surcharges be deemed necessary, Examiner has authorization to charge fees or credit any overpayment to Deposit Account No. 23-3000.

Respectfully submitted,
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